

AMENDED IN ASSEMBLY JUNE 5, 2003
AMENDED IN ASSEMBLY MAY 19, 2003
AMENDED IN ASSEMBLY APRIL 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 685

Introduced by Assembly Member Leno

February 19, 2003

An act to amend Section 120917 of the Health and Safety Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 685, as amended, Leno. HIV counselors: education and training.

Existing law authorizes the State Department of Health Services, through its Office of ~~Aids~~ AIDS, to participate in a rapid immunodeficiency virus test research program conducted with the federal Centers for Disease Control and Prevention, involving innovative testing and counseling programs.

Existing law authorizes an HIV counselor who is trained by the Office of AIDS and working in an HIV counseling and testing site funded by the department through a local health jurisdiction to perform specified HIV tests and order and report these test results to patients without authorization from a licensed health care professional or his or her authorized representative.

This bill would exempt an HIV counselor acting in accordance with the above provisions from any requirement for a high school diploma

or General Education Development (GED) equivalent if the person completes a literacy and comprehension protocol approved by the office department. The bill would also exempt an HIV counselor from certain certification fees.

The bill would also declare that it is the intent of the Legislature that the office, in consultation with the Laboratory Science Division of the department, develop a comprehensive curriculum that integrates appropriate training for an HIV counselor and a limited phlebotomy technician (LPT) that is equivalent to the LPT training standards set forth in designated regulations.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 120917 of the Health and Safety Code
2 is amended to read:
3 120917. (a) The department, through its Office of AIDS and
4 the authorized agents of the office, may participate in a rapid
5 human immunodeficiency virus test research program conducted
6 with the federal Centers for Disease Control and Prevention,
7 involving innovative HIV testing and counseling programs. Under
8 the rapid HIV test research program, as authorized by this section,
9 the department may do the following:
10 (1) Perform and report clinical test results using a rapid HIV
11 test for diagnosis, prior to test approval by the federal Food and
12 Drug Administration (FDA). However, test performance and
13 reporting shall only be done to the extent allowed under that
14 device’s investigational approval by the FDA and pursuant to a
15 California Health and Human Services Agency Institutional
16 Review Board-approved research protocol.
17 (2) Use a second independent HIV test to confirm initially
18 reactive test results to the extent allowed under the investigational
19 approval by the FDA. All rapid tests shall be confirmed using
20 technology approved by the federal Food and Drug
21 Administration. If the results from this confirmatory testing differ
22 from the results of the rapid test, the subject shall be notified. No



1 subject shall participate in the research protocol who does not
2 provide appropriate contact information.

3 (b) An HIV counselor who is trained by the Office of AIDS and
4 working in an HIV counseling and testing site funded by the
5 department through a local health jurisdiction, or its agents, may
6 do all of the following:

7 (1) Perform any HIV test that is classified as waived under the
8 federal Clinical Laboratory Improvement Act (~~CLIA~~; 42 (CLIA)
9 (42 U.S.C. Sec. 263a and following) if all of the following
10 conditions exist:

11 (A) The performance of the HIV test meets the requirements of
12 CLIA and Chapter 3 (commencing with Section 1200) of Division
13 2 of the Business and Professions Code.

14 (B) The person performing the HIV test meets the requirements
15 for the performance of waived laboratory testing pursuant to
16 subdivision (a) of Section 1206.5 of the Business and Professions
17 Code. For purposes of this subdivision and subdivision (a) of
18 Section 1206.5 of the Business and Professions Code, an HIV
19 counselor trained by the Office of AIDS shall be “other health care
20 personnel providing direct patient care” as referred to in
21 paragraph (12) of subdivision (a) of Section 1206.5 of the Business
22 and Professions Code.

23 (C) Prior to informing a patient of a test result indicative of HIV
24 infection that was performed pursuant to this paragraph, a second
25 independent HIV test is performed to confirm initially reactive test
26 results. Nothing in this subdivision shall be construed to allow an
27 HIV counselor trained by the Office of AIDS to perform any HIV
28 test that is not classified as waived under the CLIA.

29 (2) Notwithstanding Sections 1246.5 and 2053 of the Business
30 and Professions Code, order and report HIV test results from tests
31 performed pursuant to paragraph (1) to patients without
32 authorization from a licensed health care professional or his or her
33 authorized representative. Patients with indeterminate or positive
34 test results from tests performed pursuant to paragraph (1) shall be
35 referred to a licensed health care provider whose scope of practice
36 includes the authority to refer patients for laboratory testing for
37 further evaluation.

38 (c) Notwithstanding any other provision of law, an HIV
39 counselor acting in accordance with this section shall be exempt
40 from any requirement for a high school diploma or General



1 Education Development (GED) equivalent if the person
2 completes a literacy and comprehension protocol approved by the
3 ~~Office of AIDS~~ department.

4 (d) An HIV counselor shall not be subject to any certification
5 fees pursuant to Section 1246 of the Business and Professions
6 Code.

7 SEC. 2. The Legislature finds and declares that it would be
8 inefficient, costly, and an impediment to deployment of the ~~HIV~~
9 ~~rapid~~ rapid HIV test if an HIV counselor has to be trained, *using*
10 *partially redundant curricula*, by the Office of AIDS and an
11 authorized training program for *a limited phlebotomy technicians*
12 *technician, as defined in Section 1029.116 of Title 17 of the*
13 *California Code of Regulations*. Therefore, it is the intent of the
14 Legislature that the Office of AIDS, in consultation with the
15 Laboratory Science Division of the State Department of Health
16 Services, develop a comprehensive curriculum that integrates
17 appropriate training for an HIV counselor and a limited
18 phlebotomy technician (LPT) *that is equivalent to the LPT*
19 *education, training, and experience standards set forth in*
20 *paragraph (1) of subdivision (a) of Section 1034 of Title 17 of the*
21 *California Code of Regulations*.

22 SEC. 3. This act is an urgency statute necessary for the
23 immediate preservation of the public peace, health, or safety
24 within the meaning of Article IV of the Constitution and shall go
25 into immediate effect. The facts constituting the necessity are:

26 In order to authorize more personnel to participate in
27 performing HIV tests as soon as possible, it is necessary that this
28 act take effect immediately.

